



JERRY P. DYER
MAYOR

May 2, 2022

As Mayor, I have received many comments, both in support and opposed to the Council's decision to purchase the Tower Theater properties. This has become an issue where emotions are running high, and many people have asked me to intervene to either support or veto Council's action. I share the concerns about the indemnification of the Tower and Sequoia parties and financing Sequoia's purchase of their parcel at below market terms. The City Manager and I expressed those concerns to the City Council.

However, as advised by the City Attorney, the Fresno City Charter does not allow for veto of legal direction, such as indemnification agreements, nor contracts for which funding has already been appropriated. As the Tower purchase agreement is a contract, and funds have been previously appropriated in the Budget for real estate acquisitions, including new Parks and Community Centers, the actual purchase is **not** subject to veto.


Resolution No. 2022-087 approved by Council sets policy and is therefore subject to veto. The Resolution merely sets forth the policy concerning use of the property and appropriately delegates authority to the City Manager to control the property consistent with the policy. **Regardless of the Resolution, the purchase would still take place.**

Recognizing the Resolution specifically provides the Theater will be made available for all uses, including religious services, and the parking will also be made available to the public, I believe it is in the community's best interest to have that policy in place and under the authority of the City Manager.

Some have suggested that I "symbolically" veto the Resolution as a way to send a message that I do not support the Council's action. The fact of the matter is that the Council has approved the purchase and we will still own the properties regardless of a symbolic veto. Absent the Resolution, the Council could ultimately set the policy for operations of the Theater and parking lot; an action that is best left to the City Manager, who under the City Charter is responsible for operations and administration of the City.

Adventure Church has stated that they will request that the Court intervene to stop the sale to the City. Ultimately, it appears we are headed down that path and that a judge will decide whether the City's actions are legal. I will respect whatever action the Court eventually takes, however; as previously stated, under the City Charter I don't have a say in legal matters.

Sincerely,



Jerry P. Dyer
Mayor

April 22, 2022

Council Adoption: 4/21/2022

Mayor Approval:

Mayor Veto:

Override Request:

TO: MAYOR JERRY DYER

FROM: TODD STERMER, CMC 
City Council

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the City Council meeting of April 21, 2022, Council adopted the attached Resolution No. 2022-087, **Approve a Resolution Establishing a Policy for the Preservation and Use of the Tower Theatre Property and Authorizing Purchase of the Tower Theatre Property.** Item 1-LL, File ID 22-613, by the following vote:

Ayes	:	Soria, Arias, Maxwell, Esparza
Noes	:	Karbassi, Chavez, Bredefeld
Absent	:	None
Abstain	:	None

It was read into the record that this resolution is Subject to Mayoral Veto.

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before May 2, 2022. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

APPROVED /NO RETURN: SEE ATTACHED

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

_____ Date: _____

Jerry Dyer, Mayor
COUNCIL OVERRIDE ACTION: _____ Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	:



City of Fresno

2600 Fresno Street
Fresno, CA 93721
www.fresno.gov

Staff Report

File #: ID 22-613
1.-LL.

Agenda Date: 4/21/2022

Agenda #:

REPORT TO THE CITY COUNCIL

FROM: Douglas T. Sloan, City Attorney

BY: Talia Kolluri-Barbick, Assistant City Attorney

SUBJECT

Actions Pertaining to the Acquisition of property at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03)

1. Adopt a finding of Categorical Exemption pursuant to Section 15301/Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA) guidelines for the project.
2. Approve a Resolution Establishing a Policy for the Preservation and Use of the Tower Theatre Property and Authorizing Purchase of the Tower Theatre Property.
3. Approve a Joint Litigation, Defense, and Indemnity Agreement by and between the City of Fresno, the Tower Theatre Entities and Sequoia Brewery
4. Approve a Purchase and Sale Agreement and Joint Escrow Instructions by and between City of Fresno, Tower Theater Productions, Fidelity National Title Insurance Company, and Tower Theatre Productions for the Performing Arts for real property at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03) for \$6,500,000.
5. Approve a Purchase and Sale Agreement and Joint Escrow Instructions by and between City of Fresno and J&A Mash & Barrell, LLC., and Fidelity National Title Insurance Company for a portion of the real property at 777 East Olive Avenue (APN 451-265-03) for \$1,200,000.

RECOMMENDATION

Approve

Actions Pertaining to the Acquisition of property at 1247 North Wishon (APN 451-265-02) and 777 East Olive Avenue (APN 451-265-03)

1. Adopt a finding of Categorical Exemption pursuant to Section 15301/Class 1 (Existing Facilities) of the California Environmental Quality Act (CEQA) guidelines.
2. Approve a Resolution Establishing a Policy for the Preservation and Use of the Tower Theatre Property and Authorizing Purchase of the Tower Theatre Property.
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5. Approve a Purchase and Sale Agreement and Joint Escrow Instructions by and between City of Fresno and J&A

and sale agreement between the Tower Entities and Adventure, is attached (*Adventure Church, Inc. v. Tower Theatre Productions for the Performing Arts, et al*). Owners and City dispute the allegations in this lawsuit. (See Attachment 6)

The current real estate market value of the entire property, encompassing the Tower Theatre, Sequoia Brewery, Me-N-Eds, additional restaurant spaces, and 108 parking spaces, is at least \$6.5 million. This determination is based on the broker listing of the entire property for \$6.5 million in the attached listing document. (See Attachment 7) Additionally, Tower Theatre received a prior offer to buy a portion of the property including Tower Theatre and Sequoia Brewery for \$6 million from a private buyer. (See Attachment 8) The Me-N-Eds portion of the property is estimated at \$1 million. Therefore, the prior offer supports a valuation of \$7 million, which is more than the City's purchase price of \$6.5 million for the entire property. The City's purchase price also takes into account all of the lease revenues from the property that are being assigned to the City, excluding Sequoia Brewery, which is purchasing its portion of the property.

Concurrent with the purchase of the entire property, Sequoia Brewery will purchase their portion of the property for \$1.2 million, with the inclusion of credits for improvements to the Sequoia Brewery property, and payment of legal fees, the net purchase price of the Brewery property will be \$950,000, with financing provided by the City. Specifically, the City will provide a mortgage for said sale to Sequoia Brewery at a rate of 3.5% annual interest with standard terms and with a deed of trust recorded to secure said loan on the Property for a 30 year term. From the \$1.2 million purchase price, Sequoia Brewery will receive a \$50,000 repair credit for all needed repairs to their building in exchange for an "As Is" sale of the portion of the property to Sequoia Brewery, a credit of \$325,000 for attorneys' fees, including from that amount \$200,000 reducing the above \$1.2 million purchase price and of that amount \$125,000 paid to Sequoia Brewery at the close of escrow in consideration for their attorneys' fees and court costs, for a total net purchase price and mortgage of \$950,000. The consideration that the City is receiving for these terms of this agreement is explained below.

Sequoia Brewery is owned by J&A Mash & Barrel, LLC. There is pending litigation in superior court filed by J&A Mash & Barrel, LLC., against the Owner and Adventure concerning Sequoia Brewery's right of first refusal in their lease. The Court of Appeal in a January 2022 opinion upheld Sequoia's right of first refusal in their lease to buy their portion of the property and that Court of Appeal opinion is attached to this staff report. (See Attachment 9) Their case is set for trial in superior court next year concerning Sequoia Brewery's purchase rights and legal fees. As part of their purchase agreement with the City, Sequoia Brewery is allowing the sale of the entire property to proceed forward now, including the sale to the City of Tower Theatre, rather than waiting for trial and that is consideration for the City paying their legal fees now rather than awaiting the outcome of their court case next year or later. Sequoia Brewery is also cooperating with the City in shared parking rights that the City will own after the close of escrow. Public parking rights on the property are an important aspect of the City's purchase of the property.

The City is further agreeing to indemnify and defend the Tower Theatre Entities and Sequoia Brewery in the event of litigation against the parties related to this transaction by Adventure.

Finally, upon close of escrow, Laurence Abbate will receive a one (1) year continued management contract (non-employment contract) for Tower Theatre so performances continue as planned in exchange for the payment by the City to Mr. Abbate of \$8,000/month. Said agreement can be terminated with 60 days notice by Laurence Abbate.

Concurrent with this acquisition, the City will adopt through the attached resolution (Attachment 1) a policy establishing the preservation of this historic resource and its historic uses for the benefit of all members of the public so that it may continue as a community and cultural arts resource, and so that its historic character, both in interior and exterior features, is preserved and community access rights are ensured.

ENVIRONMENTAL FINDINGS

This approval is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 15301 under a Class 1 Categorical Exemption, because no physical changes to the property or the improvements are proposed, and the change in ownership will involve the continued operation of the theatre consistent with its ongoing existing uses with no expansion of that use, as well as the continued maintenance of its historic features. None of the exceptions to Categorical Exemptions set forth in CEQA Guidelines Section 15300.2 apply to this approval. Therefore, this approval is exempt pursuant to CEQA Guidelines Section 15301.

FISCAL IMPACT

The acquisition will be funded by a combination of General Fund and Measure P funds.

Attachments:

Attachment 1 - Resolution Establishing a Policy for the Preservation and Uses of the Tower Theatre Property and

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO, CALIFORNIA, ESTABLISHING A POLICY FOR
THE PRESERVATION AND USE OF THE TOWER
THEATRE PROPERTY AND AUTHORIZING THE
PURCHASE OF THE TOWER THEATRE PROPERTY

WHEREAS, the City Council has reviewed the staff report and all exhibits thereto and the Council hereby incorporates by reference the analysis in said staff report as set forth herein and in support of the findings below; and

WHEREAS, the Tower Theatre, located on the northwest corner of North Wishon and East Olive Avenues in Fresno, was constructed in 1939; and

WHEREAS, the Theatre was originally conceived of as a motion picture cinema to be managed by the Fox West Coast Theatre Corporation, and then it was reimagined as a space to allow live performance during a thorough restoration in the 1990s; and

WHEREAS, the Theatre is built in the "Streamline Moderne" style and is the most dramatic example of that style in Fresno, with a total of six circular murals ("tondos") in recessed niches inside the auditorium painted in fluorescent pigments, which are then illuminated with ultraviolet light sconces; the Tower Theatre was only the second theater in the nation to use ultraviolet light as an ornamental device; and

WHEREAS, in 1991, the dramatic theater rehabilitation was honored with a California Preservation Foundation Award for Outstanding Achievement in Restoration, and an Award of Honor from the San Joaquin Chapter, American Institute of Architects, and the Theatre is listed on the National Register of Historic Places, one of the most historically significant buildings in Fresno and the Central Valley; and

1 of 7

Date Adopted:
Date Approved:
Effective Date:
City Attorney Approval: _____

Resolution No. _____

consistent with its ongoing existing uses with no expansion of those uses, as well as the continued maintenance of its historic features; and

WHEREAS, the City can purchase the Tower Theatre Property and ensure the historical character and features are preserved and maintained, and ensure the public has continued access to building and parking as they have had for many years; and

WHEREAS, the Tower Theatre will serve as the anchor use for the Tower commercial area, with a variety of uses including as a community and cultural arts center for Fresno residents, attracting patrons who will also dine in restaurants in the area and support the economic success of many other businesses in the Tower area, which will also serve to reduce blight and crime in the area; and

WHEREAS, parking in the vicinity of the Tower Theatre is very limited, and dedicating the Tower Theatre Property parking for public use is necessary for the continued economic viability and success of the area; and

WHEREAS, the City has identified funding to purchase, preserve, maintain, and operate the Tower Theatre Property as a cultural arts center, community center, and multi-use resource for the benefit of the public; and

WHEREAS, there is a substantial risk that if the Tower Theatre is sold to another buyer that the public will not have full access to use Tower Theatre and enjoy its historic and cultural significance based on the information provided in the staff report and exhibits thereto; and

WHEREAS, the City Council hereby finds based on the staff report and exhibits thereto that all payments being made by the City herein to purchase the Tower Theatre Property are reasonable and supported by ample consideration and for a public purpose

property for \$1.2 million, minus credits and legal fees, and with financing of the same provided by the City for a net purchase of \$950,000. The City shall also consider sale of the other separate restaurant building to offset a portion of the purchase cost.

2. The City shall commit in perpetuity to preserve and maintain the Tower Theatre and especially its historic features.

3. The City shall commit in perpetuity to operate the Tower Theatre for the benefit of the public for a variety of uses, including community and cultural arts center uses, such that all other institutions and individuals may rent portions of the Tower Theatre Property for events and enjoy the Tower Theatre as many people and organizations have over its long history. Uses may consist of theatrical performances, film showings, meetings, cultural arts programming, ceremonies, including religious uses, without regard to the content of the expression or perspective of those using the Tower Theatre.

4. The Tower Theatre parking lot, being essential to the economic viability of the Tower commercial area, shall be dedicated for public parking, which may include paid parking, with specific designated use only at certain times of events taking place in the Tower Theatre, as may be necessary for the success of an event, and restaurant parking rights as provided by the City.

5. The City Manager is authorized to issue additional regulations not inconsistent with this resolution for the use and operation of the Tower Theatre and parking.

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2022.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2022
Mayor Approval/No Return: _____, 2022
Mayor Veto: _____, 2022
Council Override Vote: _____, 2022

TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Doug Sloan Date